

TAB 3

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-11939JGD

MICHAEL J. WHALON,
Plaintiff,

v.

CHRISTY'S OF CAPE COD, LLC,
Defendant.

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DEPOSITION of **MICHAEL J. WHALON**, a witness called on
behalf of the Defendant, taken pursuant to the
applicable provisions of the Massachusetts Rules of
Civil procedure, before John F. Kielty, a Notary
Public in and for the Commonwealth of Massachusetts,
at the Law Offices of Murphy, Hesse, Toomey &
Lehane, 300 Crown Colony Drive, Quincy,
Massachusetts, on Wednesday, September 7, 2005,
commencing at 10:25 a.m.

JOHN F. KIELTY
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(508) 759-6767

1 whatever you need.

2 MR. COLOMB: Okay.

3 MR. SCOTT: Just let me know.

4 MR. COLOMB: Excellent.

5 Thank you.

6 BY MR. COLOMB:

7 Q. Other than your lawsuit against Christy's,
8 which we are discussing today --

9 A. Uh-huh. (Indicates affirmatively).

10 Q. -- and this personal injury case with Mr.
11 Whalon that we just spoke about, have you been
12 involved in any other court cases?

13 A. Not that I can recall.

14 Q. Now, you graduated high school in 1985?

15 A. Correct.

16 Q. Did you go to work after graduating high
17 school?

18 A. I was working, yes.

19 Q. Do you know where you went to work after
20 graduating high school?

21 A. A couple of different outfits I was working
22 for, Benjamin's Restaurants, Hallsmith Sysco.

23 THE REPORTER: I'm sorry?

24 THE WITNESS: Hallsmith Sysco.

1 BY MR. COLOMB:

2 Q. Were you working for Benjamin's Restaurant
3 and Hallsmith Sysco at the same time?

4 A. Left one, went to the other.

5 Q. Which place did you --

6 A. I left Benjamin's --

7 Q. -- work first?

8 A. -- went to Hallsmith Sysco.

9 Q. Was Benjamin's the first job you held after
10 high school?

11 A. Yes.

12 Q. And how long did you work at Benjamin's?

13 A. I don't recall the exact dates offhand.

14 Q. Well, what type of work did you do at
15 Benjamin's?

16 A. A variety of jobs there, dishwasher, fry
17 cook.

18 Q. And I know this, but just so the record is
19 clear, where is Benjamin's located.

20 A. In Taunton.

21 Q. Actually, a very good restaurant.

22 A. Yeah.

23 Q. Do you recall the name of your supervisor
24 while you were working at Benjamin's?

1 A. Peter Sirroca (phonetic). Don't ask me to
2 spell it, because I can't help you with that.

3 Q. And can you briefly tell us what the
4 physical requirements were for the jobs that you
5 performed?

6 A. Just standing, lifting dishes, standing over
7 a frialator, cooking, pretty much.

8 Q. Were you involved in serving any of the
9 patrons at the restaurant?

10 A. Yes.

11 Q. So I am guessing you would be walking
12 between the tables and the kitchen? Would that --

13 A. Correct.

14 Q. -- be a fair guess? What types of objects
15 were you lifting?

16 A. Trays, plates, forks, knives.

17 Q. And were you able to perform this work?

18 A. Yes.

19 Q. Did you ever experience any injuries working
20 at Benjamin's?

21 A. No, not that I recall.

22 Q. And just so I am clear, when I am asking you
23 that question, I am including both physical injuries
24 and also mental or psychological injuries.

1 A. Not that I can recall.

2 Q. Do you recall when you left your employment
3 with Benjamin's?

4 A. I'm not sure of the exact date of when I
5 left them. I was working, again, at Hallsmith
6 Sysco. From there, I went to Hallsmith Sysco.

7 Q. So what was your reason for leaving
8 Benjamin's?

9 A. Just a better opportunity.

10 Q. Did you leave voluntarily?

11 A. Yes.

12 Q. What did you do for Hallsmith Sysco?

13 A. Warehouse.

14 Q. And where is Hallsmith Sysco located?

15 A. Norton, Mass.

16 Q. What type of business do they perform?

17 A. Food service.

18 Q. And what type of work did you do in the
19 warehouse?

20 A. Loading trucks, product.

21 Q. Were you physically carrying objects and
22 loading them into trucks, or did you use forklifts,
23 pallet jacks?

24 A. A little of both.

1 Q. Some of both. And were you able to perform
2 the physical requirements of that job?

3 A. Yes.

4 Q. Did you suffer any injuries working at
5 Hallsmith Sysco?

6 A. I did.

7 Q. What type of injury did you suffer?

8 A. A back injury.

9 Q. What was the nature of the back injury?

10 A. A ruptured disk.

11 Q. Did you receive treatment for the ruptured
12 disk?

13 A. Yes.

14 Q. What type of treatment did you receive?

15 A. Physical therapy and eventually operation.

16 Q. Do you know the date of this injury?

17 A. I don't recall the exact date.

18 Q. Do you recall the date of the surgery?

19 A. I do not.

20 Q. Did you file a workers' compensation claim
21 for this injury?

22 A. Yes.

23 Q. What happened with that claim?

24 A. It was an open workman's comp claim.

1 Q. Was it approved --

2 A. Yes.

3 Q. -- at some point?

4 A. Yeah.

5 Q. And you did receive some amount of
6 compensation --

7 A. Correct.

8 Q. -- under that claim? And at some point that
9 claim was closed?

10 A. Correct.

11 Q. Did you suffer any other injuries working at
12 Hallsmith Sysco?

13 A. No.

14 Q. Did you suffer any mental injuries or
15 psychological injuries while working at Hallsmith
16 Sysco?

17 A. No.

18 Q. Do you remember the name of your supervisor
19 at Hallsmith Sysco?

20 A. There was a couple of them, Ray Schiffer
21 (phonetic).

22 Q. Any others that --

23 A. Do you need the rest?

24 Q. -- you recall? If you can recall, please.

1 A. John Castro.

2 Q. Are there more?

3 A. No.

4 Q. And do you recall the date that you left
5 Hallsmith Sysco?

6 A. I don't offhand, no.

7 Q. What was the reason that you stopped working
8 at Hallsmith Sysco?

9 A. Again, there was another opportunity to do
10 something else.

11 Q. So after the back injury and having surgery,
12 did you return to Hallsmith Sysco and work for some
13 period of time?

14 A. No.

15 Q. Was your employment terminated by Hallsmith
16 Sysco?

17 A. No.

18 Q. You left voluntarily?

19 A. It was again closed.

20 Q. What was "closed"?

21 A. Just the employment was closed.

22 Q. Well, I am guessing one or the other of you
23 decided to end the relationship, either you or the
24 employer?

1 A. I believe it was mutual between the employer
2 and myself.

3 Q. What was the reason for this mutual
4 termination?

5 A. I couldn't speculate what their -- I didn't
6 discuss anything with them.

7 Q. What was your reason?

8 A. Again, it was a closed matter with them, so
9 the employment did end.

10 THE REPORTER: I'm sorry?

11 THE WITNESS: It was a closed matter, and it
12 was the employment ended.

13 BY MR. COLOMB:

14 Q. Did they at any time tell you that you were
15 fired?

16 A. No.

17 Q. When your employment ended with Hallsmith
18 Sysco, were you immediately employed somewhere
19 else, or were you unemployed for some period of
20 time?

21 A. I don't recall the exact dates, but I
22 did -- I did start with Christy's of Cape Cod -- I'm
23 sorry, of Brockton.

24 Q. Before starting at Christy's of Brockton,

1 had you applied for unemployment?

2 A. No.

3 Q. Do you know how long you had been out of
4 work before you started with Christy's of Brockton?

5 A. I don't know.

6 MR. COLOMB: And actually, I will just state
7 for benefit of the record that I am sort of adopting
8 your model of "Christy's of Brockton," as contrasted
9 with "Christy's of Cape Cod," but I'm not entirely
10 sure myself that that is a proper corporate entity.
11 But just for the ease of discussion, I know what you
12 are referring to, the Christy's before it became a
13 different company and became the present Christy's
14 of Cape Cod.

15 So just for ease, for the record, I just
16 want to note that.

17 BY MR. COLOMB:

18 Q. Let me ask you this, Mr. Whalon. Before you
19 started working for Christy's, had you worked for
20 any employers other than Benjamin's Restaurant,
21 Sysco, -- I guess that is it. For any --

22 A. Yes.

23 Q. For any employer other than those two
24 employers?

1 A. Yes.

2 Q. What other employers had you worked for?

3 A. O'Keefe-Wade Funeral Home.

4 Q. Where is this funeral home located?

5 A. In Taunton, Mass.

6 Q. When did you work there?

7 A. Right -- pretty much part time.

8 Q. Did you work part time for them while you
9 were in high school?

10 A. A little bit, yes.

11 Q. Did you work part time for the funeral home
12 while you were working at Benjamin's?

13 A. Yes.

14 Q. Did you work part time for the funeral home
15 while you were working at Sysco?

16 A. Yes.

17 Q. And did you work part time for the funeral
18 home after leaving Sysco?

19 A. Yes.

20 Q. Did you work part time for the funeral home
21 once you started employment with Christy's?

22 A. Yes.

23 Q. What type of work did you perform at the
24 O'Keefe funeral home?

1 A. Dress man.

2 Q. What does that mean?

3 A. You take care of the bodies.

4 Q. Do you have any training or education for
5 this?

6 A. No.

7 Q. Is there training, a formal training or
8 education program available for that function?

9 A. I'm sure there is.

10 Q. And do you hold any license to perform that
11 function?

12 A. No.

13 Q. And I assume you don't require a license to
14 do that?

15 A. No.

16 Q. Have you performed any other jobs at O'Keefe
17 funeral home?

18 A. Just pretty much the dress man.

19 Q. And what are the physical demands of that
20 job?

21 A. Lifting the casket.

22 Q. And do you know how much a casket would
23 weigh?

24 A. Not offhand. It all depends.

1 Q. Obviously, I am sure whether it is empty or
2 in use, right?

3 A. (Witness indicating.)

4 Q. How did you come to work at O'Keefe funeral
5 home?

6 A. Through my brother.

7 Q. Can you explain that connection?

8 A. Meaning?

9 Q. Oh, does that mean your brother already
10 worked there?

11 A. Yes.

12 Q. Is this your brother Brad?

13 A. No.

14 Q. Another brother. What is this brother's
15 name?

16 A. Jeff.

17 Q. What does Jeff do at the funeral home?

18 A. He was an apprentice.

19 Q. Does that mean an apprentice funeral
20 director?

21 A. Right.

22 Q. Do you know who owns the O'Keefe funeral
23 home?

24 A. Yes.

1 Q. Who is that?

2 A. Billy Wade.

3 Q. Are you related to Mr. Wade?

4 A. No.

5 Q. Did you suffer any injuries while working at
6 the O'Keefe funeral home?

7 A. No.

8 Q. Did you suffer any mental or psychological
9 injuries or trauma while working at the funeral
10 home?

11 A. Not that I can recall.

12 Q. Did you work at the O'Keefe funeral home
13 throughout your employment at Christy's?

14 A. Yes.

15 Q. And approximately how often would you work
16 at the O'Keefe funeral home?

17 A. On call.

18 Q. Was there any set number of hours that you
19 worked?

20 A. Again, it was on call.

21 Q. So you weren't guaranteed any number of
22 hours?

23 A. (Indicates negatively).

24 Q. It --

1 A. No.

2 Q. -- would vary? Did you pay taxes on the
3 wages that you received from O'Keefe funeral home?

4 A. Didn't earn enough to working in there.

5 Q. Now, just looking at my list, it appears
6 from the number of other employers that you were
7 with that you would have been at O'Keefe funeral
8 home for many years; is that right?

9 A. Off and on on call.

10 Q. Right. But in none of those years did you
11 earn enough money to have to report it for taxes?

12 A. No.

13 Q. After your employment ended with Christy's
14 in February of 2002, did you continue to work with
15 O'Keefe funeral home?

16 A. Yes.

17 Q. And how often did you work with O'Keefe
18 funeral home after leaving Christy's?

19 A. No, didn't work at all, couldn't give you
20 exact dates, times.

21 Q. At some point did you resume working at
22 O'Keefe funeral home?

23 A. No. Again, it was an on call.

24 Q. Just so I am clear on this, you have not

1 worked at O'Keefe funeral home since February of
2 2002?

3 A. Oh, I have. I don't know the exact dates.

4 Q. Well, let's see if we can work it this way.
5 Do you currently work at O'Keefe funeral home?

6 A. On call.

7 Q. And did you work in an on-call capacity in
8 2004 at O'Keefe funeral home?

9 A. Again, it's an on call.

10 Q. But the answer is, yes, you did?

11 A. It's on call.

12 Q. I understand that it is on call, but you
13 performed some on-call work in 2004 at O'Keefe
14 funeral home?

15 A. If I was called.

16 Q. You don't even know necessarily that you --

17 A. I don't believe that --

18 Q. -- were called in 2004?

19 A. -- what I did in -- for them that particular
20 year. I don't.

21 Q. Do you know if you worked for them in 2003?

22 A. Again, it was an on call. I don't recall
23 the exact times.

24 Q. Do you maintain any records that indicate

1 when you work at O'Keefe funeral home?

2 A. I don't recall any.

3 Q. When you did work at O'Keefe funeral home or
4 do work at O'Keefe funeral home, when you perform an
5 on-call service, do you fill out a time sheet,
6 submit a time card, or some other device that
7 indicates how many hours you have worked?

8 A. No.

9 Q. So how are you compensated for this work at
10 O'Keefe funeral home?

11 A. As they call it a -- I don't know, a
12 contract or however they want to term it.

13 Q. How do they determine the amount that they
14 are going to pay you?

15 A. Set fee by them.

16 Q. And the "set fee" is based on hours worked,
17 days worked, --

18 A. I couldn't --

19 Q. -- bodies dressed?

20 A. I have -- don't recall any conversation with
21 the owner on that.

22 Q. Well, have you ever received a check from
23 O'Keefe funeral home?

24 A. I have.

1 Q. And have you ever questioned the amount of
2 that check?

3 A. Not that I can recall.

4 Q. Have the amount of those checks varied?

5 A. Yes.

6 Q. And do you know why they varied from one
7 check to another?

8 A. I believe it was either different
9 situations, what I needed to do or didn't do.

10 Q. So there is no agreement with O'Keefe
11 funeral home as to what rate of pay you received for
12 your services?

13 A. No.

14 MR. SCOTT: Could we go off the record for a
15 second?

16 MR. COLOMB: Sure.

17 (Discussion off the record.)

18 MR. COLOMB: Why don't we go back on? In an
19 off-the-record conversation with Attorney Scott, we
20 discussed avenues where I may be able to obtain
21 information on the dates of the witness's employment
22 at O'Keefe funeral home, as well as the compensation
23 received, and I will continue those discussions with
24 Attorney Scott or potentially pursue other means as

1 appropriate. So I will suspend those questions at
2 this time.

3 BY MR. COLOMB:

4 Q. I will ask you this, though, Mr. Whalon. Do
5 you still work for O'Keefe funeral home in an
6 on-call capacity?

7 A. On call.

8 Q. When was the last time you were called to
9 perform work for O'Keefe funeral home?

10 A. Again, I don't know the exact dates at all.

11 Q. Do you have any recollection if it was in
12 this year, 2005?

13 A. I couldn't speculate on it.

14 Q. Other than Benjamin's Restaurant, Sysco,
15 Christy's, and the O'Keefe funeral home, have you
16 held any other jobs since graduating high school?

17 A. Yes.

18 Q. What other jobs have you held?

19 A. Conley Funeral Home.

20 Q. Where is the Conley Funeral Home located?

21 A. In Brockton.

22 Q. When did you work for the Conley Funeral
23 Home?

24 A. I'm not sure of the exact date, somewhere

1 from '99.

2 Q. Do you still work for Conley Funeral Home?

3 A. No.

4 Q. When was the last time you worked for Conley
5 Funeral Home?

6 A. Roughly, a year ago.

7 Q. What type of work did you perform for Conley
8 Funeral Home?

9 A. Dress man.

10 Q. Let me ask you this. Is there any
11 relationship between the O'Keefe funeral home and
12 the Conley Funeral Home?

13 A. No.

14 Q. They are independent businesses, as far as
15 you know?

16 A. Yes.

17 Q. Who was your supervisor at the Conley
18 Funeral Home?

19 A. Anne Roan.

20 Q. I'm sorry? I didn't hear that.

21 A. Anne Roan.

22 Q. And what is Ms. Roan's job at the funeral
23 home?

24 A. She's the director.

1 Q. Just to save us the time of the questions
2 and answers, would it be fair to say that the
3 physical requirements for the dress man position at
4 the Conley Funeral Home were similar to those at the
5 O'Keefe funeral home, it is the same work?

6 A. Yes.

7 Q. Did you suffer any injuries while working at
8 Conley Funeral Home?

9 A. No.

10 Q. Did you suffer any mental or psychological
11 injuries or trauma while working at the Conley
12 Funeral Home?

13 A. No.

14 Q. Why did you stop working at the Conley
15 Funeral Home?

16 A. Doesn't seem to fit in to what I'm doing.

17 Q. What is it that you are doing? When you say
18 it doesn't seem to fit in to with what you are
19 doing, what is it that you are doing?

20 A. Building maintenance.

21 Q. Was your employment terminated by Conley
22 Funeral Home?

23 A. No.

24 Q. Did you leave voluntarily?

1 A. No, I haven't -- again, on call, if needed.

2 Q. So it is your understanding that they could
3 at some point call you if needed --

4 A. Correct.

5 Q. -- at this time? Have you held other jobs
6 up through 2002 that we haven't yet discussed? I am
7 not asking about jobs after Christy's, but through
8 the conclusion of your employment at Christy's, have
9 you held any other jobs that we haven't discussed
10 this morning?

11 A. Not that I recall.

12 Q. How did you come to work at Conley Funeral
13 Home, by the way?

14 A. Through my brother.

15 Q. The same brother?

16 A. Correct.

17 Q. And he also worked at Conley Funeral Home?

18 A. Right.

19 Q. Now, your employment with Christy's ended in
20 February of 2002; is that right?

21 A. I don't recall the exact date.

22 Q. Have you been employed after your job at
23 Christy's ended? Have you held other jobs since
24 your employment at Christy's ended?

1 A. Yes.

2 Q. What was the first job that you held after
3 leaving Christy's?

4 A. CVS Pharmacy.

5 Q. Did you work at a particular CVS store?

6 A. Yes.

7 Q. What store was that?

8 A. Their Taunton store.

9 Q. What job did you hold at CVS in Taunton?

10 A. Manager in training.

11 Q. Did you hold any other positions at the CVS,
12 other than manager in training?

13 A. No.

14 Q. When did you hold this job?

15 A. I don't recall the exact dates.

16 Q. Do you recall how long after your employment
17 ended with Christy's?

18 A. I don't recall.

19 Q. Do you know when your employment with CVS
20 ended?

21 A. The exact date, it was in August.

22 Q. Do you know the year?

23 A. I don't recall.

24 Q. Do you know how many months or how many

1 years you had worked at CVS?

2 A. Exactly, no.

3 Q. Do you know if it was more than one year?

4 A. I don't.

5 Q. What did you do as a manager in training?

6 A. Learned the CVS -- ran their business.

7 Q. Was there a formal training program?

8 A. Yes.

9 Q. Where did that take place?

10 A. Right in their store.

11 Q. Who was your supervisor when you were
12 working at CVS?

13 A. Kevin. I believe it's O'Keefe.

14 Q. And do you know what Kevin O'Keefe's title
15 was?

16 A. I think supervisor. I'm not sure of his
17 exact title.

18 Q. Was Mr. O'Keefe assigned to the Taunton
19 store?

20 A. I believe he was.

21 Q. At some point did you become a manager at
22 CVS?

23 A. No.

24 Q. Why did you not become a manager at CVS?

1 A. Wasn't -- didn't work out.

2 Q. Did CVS terminate your employment?

3 A. No.

4 Q. Did you leave CVS voluntarily?

5 A. Yes.

6 Q. Had you been told that you were going to be
7 terminated?

8 A. Not that I can recall.

9 Q. Had you been told that you were not going to
10 be selected as a manager?

11 A. Not that I can recall, no.

12 Q. So when you say it didn't work out, what
13 didn't work out at CVS?

14 A. The ability to perform what they were
15 looking for.

16 Q. And how did you learn that you were unable
17 to perform what they were looking for?

18 A. I was talked to.

19 Q. Who told you this?

20 A. Supervisor.

21 Q. That would be Mr. O'Keefe?

22 A. Right.

23 Q. What were the physical demands of the
24 manager-in-training job?

1 A. Lifting products, stocking their shelves.

2 Q. Anything else?

3 A. Their paperwork.

4 Q. Did you suffer any injuries while working at
5 CVS?

6 A. Not that I can recall.

7 Q. Did you suffer any mental or psychological
8 injuries or trauma while working at CVS?

9 A. I already had.

10 Q. Can you tell me about your relationship with
11 Mr. O'Keefe?

12 A. Other than a supervisor, nothing.

13 Q. Did you like Mr. O'Keefe?

14 A. He was a supervisor.

15 Q. Well, I understand he was your supervisor,
16 but what I am asking is this. Did you like him --

17 A. I didn't have --

18 Q. -- as a person?

19 A. -- a personal relationship with him, no.
20 On, you know, a professional basis, he was fine.

21 Q. Did you have any disagreements with Mr.
22 O'Keefe?

23 A. Not that I can recall.

24 Q. Did your working relationship with Mr.

1 O'Keefe cause you any stress?

2 A. Not that I can recall on that.

3 Q. Did your working relationship with Mr.
4 O'Keefe cause you any anxiety?

5 A. Not that I can recall.

6 Q. Did you suffer any panic attacks while
7 working at CVS?

8 A. I do, yeah.

9 Q. So you did suffer panic attacks while
10 working at CVS?

11 A. Uh-huh. (Indicates affirmatively). Yes.

12 Q. Yes. How many?

13 A. Offhand, I don't know how many.

14 Q. More than one?

15 A. Again, I don't know how many.

16 Q. What caused these panic attacks?

17 A. They just come on.

18 Q. Are they related to stress on the job?

19 A. I'm not sure.

20 Q. Do you recall what you were doing when you
21 suffered the panic attacks?

22 A. I don't recall.

23 Q. Did you experience any chest tightness while
24 working at CVS?

1 A. Yes.

2 Q. And how many times did that happen?

3 A. I don't recall.

4 Q. More than once?

5 A. I don't recall.

6 Q. What caused your chest tightness while
7 working at CVS?

8 MR. SCOTT: Objection.

9 You can answer, if you know.

10 THE WITNESS: Ask it again.

11 BY MR. COLOMB:

12 Q. What caused your chest tightness while
13 working at CVS?

14 A. Between anxiety and --

15 Q. And do you know what caused your anxiety?

16 A. I --

17 MR. SCOTT: Objection.

18 You can answer.

19 THE WITNESS: I don't.

20 BY MR. COLOMB:

21 Q. Do you believe that you were able to perform
22 the functions of your job at CVS?

23 A. Do I believe?

24 Q. I am asking your opinion.

1 A. Go ahead. Ask it again.

2 Q. Do you believe that you were able to perform
3 the functions of your job at CVS?

4 A. No.

5 Q. And what functions were you not able to
6 perform?

7 A. I wasn't able to perform any cash or
8 inventory functions.

9 Q. Did CVS prohibit you from performing cash or
10 inventory functions?

11 A. No.

12 Q. Did you tell CVS that you were unable or
13 unwilling to perform cash or inventory functions?

14 MR. SCOTT: Objection.

15 BY MR. COLOMB:

16 Q. Just so I have the answer on the record, did
17 you answer that question?

18 A. I didn't, no. Repeat it.

19 Q. The question I asked was this. Did you tell
20 CVS that you were unable to perform cash -- unable
21 or unwilling to perform cash --

22 A. No.

23 Q. -- or inventory functions? Did you, in
24 fact, perform cash and inventory functions at CVS?

1 A. Yes.

2 Q. How often?

3 A. Daily.

4 Q. Are there other functions of the job that
5 you were unable to perform at CVS?

6 A. Not that I can recall.

7 Q. Did you receive any performance evaluations
8 while working at CVS?

9 A. Not that I can recall.

10 Q. So when your supervisor informed you that
11 you were not able to perform what they were looking
12 for at CVS, that was a verbal communication?

13 A. I don't recall whether it was directed.

14 Q. Did you ever receive anything in writing
15 from CVS commenting on your performance?

16 A. Not that I can recall.

17 Q. Did you receive a letter or any paperwork
18 from CVS indicating why your employment ended?

19 A. I ended the employment.

20 Q. Did you submit a letter to CVS or anything
21 in writing when you ended the employment?

22 A. No.

23 Q. How did you tell CVS that you were ending
24 the employment?

1 A. Through notice.

2 Q. To whom did you give the notice?

3 A. To the manager of that location.

4 Q. Was that Mr. O'Keefe?

5 A. No.

6 Q. Who was that?

7 A. Eric. I don't recall his last name.

8 Q. While you were working at CVS, were you
9 receiving any other source of income?

10 A. I don't recall.

11 Q. When did your employment with CVS end?

12 A. I don't know the exact date.

13 Q. Do you know the approximate date?

14 A. I don't.

15 Q. Do you maintain a résumé?

16 A. Yes.

17 Q. Does your résumé list your employment with
18 CVS?

19 A. I believe.

20 MR. COLOMB: I believe that is one document
21 we have asked for, so that may help us with these
22 questions.

23 BY MR. COLOMB:

24 Q. Did you hold any other jobs at the same time

1 as working at CVS?

2 A. On call.

3 Q. With the funeral homes --

4 A. Funeral homes.

5 Q. -- that we have already talked about?

6 A. (Indicates affirmatively).

7 Q. Did you hold any other jobs at the same
8 time?

9 A. I don't recall.

10 Q. After leaving CVS, were you employed by
11 anyone else?

12 A. Yes.

13 Q. Who was that?

14 A. Cumberland Farms.

15 Q. After leaving the employment of CVS and
16 before starting at Cumberland Farms, did you receive
17 unemployment compensation?

18 A. Not that I recall.

19 Q. Did you apply for unemployment compensation?

20 A. Not that I can recall, no.

21 Q. And where did you work for Cumberland Farms?

22 A. Their North Attleboro location.

23 Q. When did you start working for Cumberland
24 Farms?

1 A. Shortly after CVS.

2 Q. Do you know how long it was between CVS and
3 Cumberland Farms?

4 A. No, I don't recall.

5 Q. What type of work did you perform for
6 Cumberland Farms?

7 A. Manager in training.

8 Q. And what was the nature of that position?
9 What were the job duties?

10 A. Opening the store, closing the store,
11 loading product.

12 Q. Are you still employed by Cumberland Farms?

13 A. No.

14 Q. Did you hold any other positions at
15 Cumberland Farms, other than manager in training?

16 A. No.

17 Q. When did your employment with Cumberland
18 Farms end?

19 A. I don't know the exact date.

20 Q. Do you know how long, how many months or
21 years you worked for Cumberland Farms?

22 A. I don't.

23 Q. Is your employment with Cumberland Farms
24 listed on your résumé?

1 A. Yes.

2 Q. Why did you not become a manager with
3 Cumberland Farms?

4 A. Again, it was cash and inventory.

5 Q. What about "cash and inventory"?

6 A. I had panic attacks in the chest.

7 Q. Did Cumberland Farms ever tell you that they
8 were not going to make you a manager because of cash
9 and inventory issues?

10 A. I was terminated from Cumberland Farms.

11 Q. When were you terminated?

12 A. I don't know the exact date.

13 Q. Why were you terminated?

14 A. The inability to pick up their inventory,
15 cash, and ordering systems.

16 Q. Who was your supervisor while working at
17 Cumberland Farms?

18 A. I don't recall his name.

19 Q. It was a man?

20 A. Yes.

21 Q. Was this man assigned to the North Attleboro
22 store?

23 A. Yes.

24 Q. Was he the manager of the North Attleboro

1 store?

2 A. Supervisor.

3 Q. You held the position of manager in
4 training. Were there other managers in training at
5 the North Attleboro store when you were there?

6 A. Managers in training, no.

7 Q. In addition to this man you have identified
8 as your supervisor, were there any other managerial
9 employees in the store?

10 A. Yes.

11 Q. Who was that, or who were they?

12 A. There was a female. I don't remember her
13 name.

14 Q. Do you know what her job was?

15 A. She was the manager of the store.

16 Q. So this individual that you reported to was
17 a supervisor but was not the manager of the store?

18 A. She was the manager of the store. She
19 reported to her supervisor. I was just training.

20 Q. And maybe I misunderstood you, but I think
21 you said you reported to a man; is that correct?

22 A. He was the supervisor. She reported to him.
23 And he would ask me a question or whatever, and I
24 would answer.

1 Q. So both you and the manager reported to the
2 same gentleman, --

3 A. Correct.

4 Q. -- whoever he was? Was he in the store
5 every day?

6 A. Not that I can recall every day.

7 Q. Do you know if he had responsibility for
8 other stores?

9 A. I believe he did.

10 Q. Who informed you that your employment at
11 Cumberland Farms was terminated?

12 A. The supervisor.

13 Q. How did he inform you that your employment
14 was terminated?

15 A. Took me in the office and terminated my
16 employment.

17 Q. What did he say to you when he terminated
18 your employment?

19 A. The inability to do the job.

20 Q. Did he say anything more than that?

21 A. Not that I can recall.

22 Q. Did he indicate how you were unable to do
23 the job?

24 A. Just that I was not picking up the

1 paperwork, and --

2 Q. Did you suffer any injuries while you were
3 working at Cumberland Farms?

4 A. Injuries?

5 Q. Well, we will start with this. Any physical
6 injuries while working at Cumberland Farms?

7 A. No.

8 Q. Did you suffer any mental or psychological
9 injury or trauma while you were working at
10 Cumberland Farms?

11 A. From Cumberland -- Cumberland Farms?

12 Q. I am not asking the source. I am just
13 asking --

14 A. Okay.

15 Q. -- if you suffered any injuries.

16 A. Not that I can recall.

17 Q. Did you experience any anxiety attacks while
18 working for Cumberland Farms?

19 A. Yes.

20 Q. How many anxiety attacks did you have?

21 A. I don't recall the exact amount, how many
22 times.

23 Q. Did you say many times?

24 A. (Witness indicating.)

1 THE REPORTER: Excuse me?

2 THE WITNESS: I don't recall exact, how many
3 times.

4 BY MR. COLOMB:

5 Q. Oh, how many times. Do you recall how often
6 you suffered anxiety attacks?

7 A. I don't recall the exact amount of.

8 Q. Did you suffer any chest pains while working
9 at Cumberland Farms?

10 A. Yes.

11 Q. Were these chest pains in connection with
12 the anxiety attacks?

13 MR. SCOTT: Objection.

14 You can answer.

15 MR. COLOMB: I will strike --

16 MR. SCOTT: You can answer.

17 MR. COLOMB: I will strike the question.

18 That's fine, fair point.

19 BY MR. COLOMB:

20 Q. How often did you experience chest pain
21 while working at Cumberland Farms?

22 A. The amounts, it was quite -- quite a bit.

23 Q. Did you experience chest pain every week?

24 A. Yes.

1 Q. Did you experience any other symptoms while
2 working at Cumberland Farms, in addition to the
3 anxiety attacks and the chest pains?

4 A. Not that I can recall.

5 Q. After the termination of your employment at
6 Cumberland Farms, did you file for unemployment?

7 A. Yes.

8 Q. Did you receive unemployment?

9 A. I did.

10 Q. For how long did you receive unemployment?

11 A. I don't recall the exact dates.

12 Q. Do you recall if you exhausted the available
13 benefits?

14 A. I don't recall.

15 Q. Did you file a workers' compensation claim
16 while working at Cumberland Farms?

17 A. No.

18 Q. Did you file a workers' compensation claim
19 after leaving Cumberland Farms?

20 A. Not that I recall.

21 Q. I think I neglected to ask you the same
22 questions about CVS. Did you file a workers'
23 compensation claim while working at CVS?

24 A. Not that I recall.

1 convenient, maybe we can take a couple-minute
2 break?

3 MR. COLOMB: Sure. That's fine.

4 MR. SCOTT: But at a convenient point.

5 MR. COLOMB: Why don't we wrap up sort of
6 the same line of questioning --

7 MR. SCOTT: Sure.

8 MR. COLOMB: -- on the jobs, and then we
9 will --

10 MR. SCOTT: Sure.

11 MR. COLOMB: -- get ourselves to the present
12 day; and then we can go back and take care of
13 whatever we need to take care of?

14 BY MR. COLOMB:

15 Q. After your employment ended with Cumberland
16 Farms --

17 A. Uh-huh. (Indicates affirmatively).

18 Q. -- and you collected unemployment for some
19 period of time, after that, did you obtain another
20 job, any other jobs?

21 A. Up until?

22 Q. Up until right now, today.

23 A. Recently, yes.

24 Q. What was the next job that you obtained

1 after Cumberland Farms?

2 A. Maintenance.

3 Q. And do you hold that job today?

4 A. Yes.

5 Q. Who is your employer?

6 A. I work through a temp agency.

7 Q. What is the agency?

8 A. Reardon and Associates.

9 Q. Where are they located?

10 A. They're in Dedham.

11 Q. And can you tell me how they operate, in
12 other words, how they put you into a work
13 placement?

14 A. I got the job through a gentleman who's
15 their manager now of maintenance.

16 Q. Let me ask my question a different way,
17 because I am --

18 A. Uh-huh. (Indicates affirmatively).

19 Q. -- not sure I understood it actually.
20 Does Reardon and Associates find a placement for
21 you to work on a temporary basis at some other
22 company?

23 A. I'm sure that's what their temp agency does.
24 I went through that temp agency, is where I was told

1 to go through.

2 Q. You show up at Reardon temp agency at some
3 point?

4 A. No.

5 Q. No. Have you ever been to Reardon temp
6 agency?

7 A. No.

8 Q. Does Reardon temp agency send you to other
9 businesses to do work?

10 A. No.

11 Q. Then I will just ask the open ended
12 question. How are you employed by Reardon temp
13 agency? What do you do that they pay you for?

14 A. I --

15 MR. SCOTT: First of all, let me object to
16 the question.

17 But you can answer it.

18 THE WITNESS: I just -- that's how the
19 gentleman ran me through his temp agency. I
20 don't -- that's how they pay me, is through his temp
21 agency.

22 BY MR. COLOMB:

23 Q. Okay.

24 A. That's who he hires temps from, and I just

1 went in, paperwork, and Reardon picks -- does all my
2 paperwork.

3 Q. So where do you physically do maintenance
4 work?

5 A. In Stoughton.

6 Q. Now, we are getting somewhere. Now, we are
7 getting somewhere.

8 A. I've just never been to Reardon.

9 Q. Got you, okay. What is the location in
10 Stoughton where you are doing the work?

11 A. It's a warehouse. The location is on Kay
12 Way in Stoughton.

13 Q. Do you know who owns this warehouse?

14 A. Harold Garber.

15 Q. What does Harold Garber do, if you know?

16 A. I believe he's the owner.

17 Q. Do you know what happens in this warehouse?

18 A. Yes.

19 Q. What happens in the warehouse?

20 A. They deal with machinery, conveyor systems.

21 Q. Is a product manufactured in this
22 warehouse?

23 A. I don't know where they manufacture their
24 product. I know it comes in and goes out.

1 Q. Do you know what the product is that comes
2 in and --

3 A. Yes.

4 Q. -- goes out?

5 A. Uh-huh. (Indicates affirmatively).

6 Q. What is the product?

7 A. It's cigarettes, groceries, juices.

8 Q. So is it your understanding they are a
9 distributor?

10 A. Right.

11 Q. Is Garber the convenience store people?

12 A. Yes.

13 Q. I hadn't heard of the Harold. That is an
14 individual? That is a gentleman, --

15 A. It's the owner.

16 Q. -- Harold Garber?

17 A. Correct.

18 Q. So I understand then you are an employee of
19 this Reardon?

20 A. Right.

21 Q. But you physically report to work at the
22 Garber warehouse?

23 A. Correct.

24 Q. And at the Garber warehouse you are

1 performing maintenance functions?

2 A. Right.

3 Q. Can you describe those functions?

4 A. Putting together conveyor systems,
5 maintaining conveyor systems.

6 Q. Do you do any other tasks?

7 A. Meaning do I change a light bulb? Yes.

8 Q. Do you do any cleaning tasks?

9 A. Other than after what we've done, put
10 together.

11 Q. Do you operate any machinery?

12 A. Yes.

13 Q. What type of machinery do you operate?

14 A. Fork trucks, Hella trucks.

15 Q. Do I understand that you know Harold
16 Garber?

17 A. Just through passing in the halls.

18 Q. So how did you come to obtain this job?

19 A. Through a friend of mine.

20 Q. Who is the friend?

21 A. Ed Brown.

22 Q. And does Mr. Brown work at this
23 establishment?

24 A. Yes.

1 Q. And again, I am just trying to make sure I
2 understand this. You first went and talked to
3 someone at Garber who told you that you would be
4 employed through Reardon?

5 A. No.

6 Q. No? What happened after you spoke with Mr.
7 Brown?

8 A. Went through Mr. Brown.

9 Q. Yes.

10 A. Who in turn put me through Reardon.

11 Q. I see. Are you able to perform the
12 functions of this maintenance position?

13 A. For what I -- yes.

14 THE REPORTER: Excuse me?

15 THE WITNESS: Yes.

16 THE REPORTER: Thank you.

17 BY MR. COLOMB:

18 Q. Who is your supervisor in this job?

19 A. Ed Brown.

20 Q. Now, you said Mr. Brown referred you into
21 this position?

22 A. Right.

23 Q. How do you know Mr. Brown?

24 A. He's a neighbor.

1 Q. When did you start this job?

2 A. I don't recall the exact date.

3 Q. Do you know how long you have been working
4 in this position?

5 A. Probably about a year and a half.

6 Q. Are you paid by the hour?

7 A. Yes.

8 Q. How much are you paid?

9 A. \$19 an hour.

10 Q. Are you a full-time employee?

11 A. I go through the temp agency.

12 Q. I am just interested in how many hours you
13 work per week.

14 A. Because I don't work for them.

15 Q. I understand that.

16 A. Okay.

17 Q. Right. Do you typically work 40 hours per
18 week?

19 A. Yes.

20 Q. Do you perform overtime work?

21 A. Yes.

22 Q. And I am assuming these wages are taxed
23 wages?

24 A. Right.

1 Q. And what were those responsibilities, if you
2 could describe them, please?

3 A. The manager's responsibilities?

4 Q. Yes.

5 A. From what I was overseeing, was she was
6 responsible for pretty much running a convenience
7 store.

8 Q. Again, I am asking specific to cash
9 management. What were the responsibilities of the
10 manager as you observed her?

11 A. Again, she would count up the cash, make the
12 deposit, bring it to the bank.

13 Q. Were you capable of performing those
14 functions?

15 A. Other than the issue that I was having with
16 cash and those particular areas, I could handle the
17 manager functions.

18 Q. In your current employment, do you have any
19 responsibility for cash?

20 A. No.

21 Q. Are you able to perform the functions of
22 your current job?

23 A. I don't deal with cash or paperwork or -- I
24 just go in and put machines together.

1 Q. And are you able to satisfactorily do that
2 work?

3 A. Satisfactorily doing that.

4 Q. Have you ever been evaluated by your current
5 employer?

6 A. No.

7 MR. SCOTT: For?

8 MR. COLOMB: For performance.

9 MR. SCOTT: Could you clarify that?

10 MR. COLOMB: Sorry. Yes.

11 BY MR. COLOMB:

12 Q. Has your performance ever been --

13 A. No.

14 Q. -- evaluated in any way by your current
15 employer?

16 A. Other than an increase we've had, yeah.

17 Q. And you have received increases in pay?

18 A. Yeah.

19 Q. More than one?

20 A. Just one.

21 Q. Has your current employer expressed any
22 dissatisfaction with your performance at any time?

23 A. No.

24 Q. Do you maintain your own personal finances

1 in your household?

2 A. Yes.

3 Q. And are you able to perform those
4 functions?

5 A. Somewhat.

6 Q. Does performing those functions cause you
7 to have anxiety attacks or panic attacks?

8 A. Yeah.

9 Q. What about household cash management causes
10 you to have anxiety attacks?

11 A. Oh, no, I just make sure the funding's
12 there for it.

13 Q. Do you make bank deposits of your personal
14 funds?

15 A. Yes.

16 Q. Do you pay your own personal bills?

17 A. Yes.

18 Q. Are you able to achieve those tasks without
19 concern or panic attacks?

20 A. My wife and I do it.

21 Q. But again, performing those function for
22 your personal finances, do they cause you to suffer
23 panic attacks?

24 A. They're there.

1 Q. Does anything other than cash, finance, and
2 accounting, and again, those are my words not yours,
3 does anything other than that cause you to suffer a
4 panic attack?

5 MR. SCOTT: Objection.

6 You can answer.

7 THE WITNESS: There's probably a few things.
8 I couldn't pinpoint what they were.

9 BY MR. COLOMB:

10 Q. Are you a physically active person?

11 MR. SCOTT: Objection.

12 You can answer, if you understand.

13 BY MR. COLOMB:

14 Q. I will --

15 A. I do okay.

16 Q. We will go through some specifics then. Do
17 you engage in sports?

18 A. A couple times, so I guess, yes.

19 Q. What sports do you participate in?

20 A. I've done a softball league.

21 Q. Any other sports?

22 A. Fishing.

23 Q. Did you participate in a softball league
24 before working at Christy's Markets?

1 A. No.

2 Q. Did you participate in a softball league
3 after your employment ended with Christy's Markets?

4 A. Currently, --

5 Q. You currently --

6 A. -- doing softball.

7 Q. -- participate. Did you fish before you
8 started working at Christy's Markets?

9 A. Yes.

10 Q. And have you fished since leaving Christy's
11 Markets?

12 A. I don't recall.

13 Q. Is there any reason why you haven't been
14 fishing?

15 A. Don't recall. I mean, --

16 Q. How do you like to spend your recreational
17 time when you are not working?

18 A. With my family.

19 Q. And did you spend your time with your
20 family before working at Christy's Markets?

21 A. Pretty much spent time the past 18 to 22
22 years with my family.

23 Q. And has that changed during that 18-year
24 period? Has there been any change?

1 A. In?

2 Q. Meaning in the frequency or the type of
3 activities you engage in with your family.

4 A. I don't recall.

5 Q. Do you do anything else for recreation?

6 A. No.

7 Q. I believe you mentioned an ankle injury --

8 A. Uh-huh. (Indicates affirmatively).

9 Q. -- this morning, which we were trying to
10 determine when that happened, whether it was while
11 you were working at Christy's or possibly at some
12 other time. Other than that ankle injury, prior to
13 working at Christy's market, had you suffered any
14 physical injuries or ailments of any significance?

15 A. Clarify what -- Christy's market or
16 Christy's of Cape Cod?

17 Q. Christy's of Cape Cod. Well, any --

18 A. Christy's of Cape Cod.

19 Q. -- Christy's employment. I am just going
20 back to 1998.

21 A. Okay. I wasn't working for them at the
22 time, --

23 Q. Right.

24 A. -- Christy's market.

1 Q. I understand.

2 A. I was working for Christy's of Cape Cod.

3 Q. Okay.

4 A. Okay.

5 Q. Prior to 1998, had you suffered any
6 significant injuries or illnesses of any kind,
7 physically?

8 A. I've already answered those prior to.

9 Q. Okay.

10 A. I believe I've already answered them.

11 Q. Can you answer it again, please?

12 A. I believe I already answered it for you. We
13 just went through all this.

14 MR. SCOTT: I think this is a different
15 question, because he is putting a time frame on it
16 now. So why don't you go ahead and answer?

17 THE WITNESS: Okay. I don't recall.

18 BY MR. COLOMB:

19 Q. You don't recall what your health was prior
20 to 1998, if you had any major health issues?

21 A. No, nothing major.

22 MR. SCOTT: Can I confer with Mr. Whalon for
23 a moment?

24 MR. COLOMB: Sure.

1 MR. SCOTT: Before he answers another
2 question?

3 MR. COLOMB: Yes. Do you want us to step
4 out for a moment?

5 MR. SCOTT: Oh, no. No.

6 MR. COLOMB: Okay.

7 (Discussion off the record.)

8 MR. SCOTT: Sorry.

9 MR. COLOMB: That's fine.

10 BY MR. COLOMB:

11 Q. Again, we have discussed an ankle injury,
12 and you have discussed -- well, started to discuss,
13 and we are certainly going to be discussing further
14 panic attacks, chest pains, those types of issues.
15 Other than that, have you had any health problems
16 since 1998?

17 A. To present?

18 Q. To present, correct.

19 A. Yes.

20 Q. What is the nature of those problems?

21 A. The ankle injury.

22 Q. The ankle injury, which we discussed this
23 morning?

24 A. (Indicates affirmatively).

1 Q. Any other physical ailments from 1998 to the
2 present, other than the ankle injury?

3 A. Physicals meaning? Just clarify it a little
4 bit more.

5 Q. Have you had any surgery since 1998, other
6 than the ankle?

7 A. No.

8 Q. Have you had any back injuries since 1998?
9 You mentioned one, I believe, that was prior to
10 1998 --

11 A. Prior.

12 Q. -- this morning.

13 A. Right. Right.

14 Q. Have you had any overnight hospitalization
15 since 1998, other than the ankle?

16 A. Yes.

17 Q. What was that for?

18 A. Migraines.

19 Q. When did that happen?

20 A. They've been happening quite sometime.

21 Q. How many times have you been hospitalized
22 for migraines?

23 A. I don't recall the exact amount of times.

24 Q. More than five times?

1 A. I don't recall the exact amount.

2 Q. More than once?

3 A. More than once.

4 Q. When was the first time you were
5 hospitalized for a migraine?

6 A. I don't have the exact dates.

7 Q. Do you have any idea as to the date?

8 A. Migraines come on. There's no set time on
9 them.

10 Q. I understand what a migraines is. I am
11 asking a very --

12 A. Okay.

13 Q. -- specific question now as to
14 hospitalization.

15 A. I don't recall the exact dates.

16 Q. Well, you keep saying, "exact dates." If
17 you recall --

18 A. I don't recall --

19 Q. -- something other than --

20 A. -- the exact dates.

21 Q. -- an exact date --

22 A. -- of when they -- when I was hospitalized
23 for them.

24 Q. One of the things for Mr. Kielty is we can't

1 be talking over each other, so we have --

2 A. Uh-huh. (Indicates affirmatively).

3 Q. -- to have one talk, and then the other
4 person talk.

5 I was simply questioning your use of "I
6 don't recall the exact dates." If you have any
7 recollection at all, I would like to --

8 A. I don't --

9 Q. -- know that.

10 A. I don't recall the dates.

11 Q. Did you suffer migraines prior to your
12 employment with Christy's?

13 A. Yes.

14 Q. Other than migraines, other than the ankle
15 injury that we have spoken of, have you been
16 hospitalized for anything else since 1998?

17 A. Yes.

18 Q. What else have you been hospitalized for?

19 A. Jaw surgery.

20 Q. Did you suffer an injury to your jaw?

21 A. Years earlier.

22 Q. How did you injure your jaw?

23 A. I was kicked in the mouth.

24 Q. So I understand, were you treated at the

1 time of the injury, and then you required additional
2 treatment --

3 A. Right.

4 Q. -- since 1998?

5 MR. SCOTT: Try to let him finish his whole
6 sentence before you answer.

7 THE WITNESS: Okay.

8 BY MR. COLOMB:

9 Q. Other than the ankle, the migraines, and
10 the jaw surgery, have you been hospitalized since
11 1998?

12 A. Again, just the migraines.

13 Q. At some point in time, did you come to be
14 employed by Christy's?

15 A. After when?

16 Q. Well, in 1998, did you take a job with
17 Christy's?

18 A. Right. Yes.

19 Q. Can you tell us, please, when I say,
20 "Christy's" what that meant in 1998 when you first
21 started employment, what was that organization?

22 A. It was Christy's of Cape Cod.

23 Q. And how did it happen that you were employed
24 by Christy's of Cape Cod?

1 A. Christy's Markets were selling their
2 locations.

3 Q. Were you working in one of those locations
4 prior to 1998?

5 A. I was their food service.

6 Q. And prior to 1998, what company were you
7 working for?

8 A. Prior to?

9 Q. Yes.

10 A. Christy's Markets.

11 Q. And Christy's Markets became Christy's of
12 Cape Cod in 1998?

13 A. The stores that he kept down the Cape, yes.

14 Q. The original Christy's Markets, when did you
15 first start working for that company?

16 A. I don't recall the exact date I started with
17 them. I was a sales associate all the way up to the
18 position that I was in.

19 Q. Did you start working in a particular store
20 location?

21 A. Their Taunton location.

22 Q. In 1998, when Christy's Markets ceased to be
23 Christy's Markets and became Christy's of Cape Cod,
24 what position were you holding at that time, at the

1 time of the change?

2 A. I don't believe that we're going to get
3 spoken to on what positions were available in the
4 company, Christy's Market, Inc., through the
5 company.

6 Q. I guess what I am asking is this. What was
7 the last position you held at Christy's Markets, --

8 A. Was the food service.

9 Q. -- Inc.? Food service?

10 A. I don't know their exact terminology on it.
11 It was their food service.

12 Q. Was it a managerial position?

13 A. It was overseeing some locations they had.

14 Q. What did you do in this job?

15 A. I was -- they had Taco Bell, oversee the
16 Taco Bell programs, make sure the stores were
17 running them right.

18 Q. Did you have other responsibilities?

19 A. Yeah, they also had Fresh Express, making
20 sandwiches, a lot of food service training.

21 Q. Were you responsible for specific stores?

22 A. Yes.

23 Q. Do you recall what those stores were?

24 A. What they were?

1 Q. What locations they were?

2 A. They were between Connecticut, Cape Cod,
3 Boston.

4 Q. Let me ask that a different way. Were you
5 responsible for this function at all Christy's
6 Market locations?

7 A. At all, no.

8 Q. So there were other individuals who were
9 responsible for the food service function of other
10 locations?

11 A. Right.

12 Q. Was your performance ever evaluated while
13 you were working for Christy's Markets, Inc.?

14 A. I don't recall. I don't have that folder.

15 Q. Were you ever disciplined while working for
16 Christy's Markets, Inc.?

17 A. I don't recall.

18 Q. Were you ever told that your performance was
19 unacceptable while working for Christy's Markets,
20 Inc.?

21 A. I don't recall.

22 Q. Who was your supervisor when you were
23 working as the food service trainer at Christy's
24 Markets, Inc.?

1 A. It was Patrick McKeown.

2 Q. As the food service trainer, did you have
3 any responsibilities for cash management?

4 A. No.

5 Q. As the food service trainer, did you have
6 any responsibilities for computers or computer
7 systems?

8 A. Not at the time.

9 Q. As the food service trainer, were you
10 capable of performing all the functions of your
11 job?

12 A. With what information I had, yes.

13 Q. Did you suffer any injuries while working
14 for Christy's Markets, Inc.?

15 A. I don't recall.

16 Q. What was your relationship like with Mr.
17 McKeown while you were working for Christy's
18 Markets, Inc.?

19 MR. SCOTT: Objection.

20 You can answer.

21 THE WITNESS: Didn't seem to have any
22 problems.

23 BY MR. COLOMB:

24 Q. Now, something happened in 1998 where

1 Christy's Markets, Inc. ceased to exist and a new
2 company came into being; is that your
3 understanding?

4 A. Right.

5 Q. And can you tell us what happened in 1998?

6 A. Other than they sold Christy's up here in
7 New England and spun off his own company on the
8 Cape.

9 Q. What happened to your employment at that
10 time?

11 A. Again, they were supposed to let us know
12 what we would be doing, if there was a position
13 available in talking to each individual.

14 Q. Did someone talk to you about the
15 possibility of available positions?

16 A. No, I hadn't talked to anybody about it.

17 Q. Did you eventually obtain a position with
18 Christy's of Cape Cod?

19 A. I did.

20 Q. How did you obtain that position?

21 A. I asked Patrick if he needed anybody to work
22 down the Cape.

23 Q. What did he say to you?

24 A. He needed a manager at the time.

1 during those five years?

2 A. Right. Yes.

3 Q. And you performed additional functions as
4 well?

5 A. Right.

6 Q. Let's start with the marketing counselor
7 job. Can you tell me what that job requires?

8 A. That requires the daily operations of their
9 stores.

10 Q. During the -- what was it, four to five
11 years that you served as the marketing counselor,
12 were you only the individual filling that job?

13 A. Yes.

14 Q. Would I be correct to understand then that
15 your marketing counselor responsibilities were for
16 all stores in the company?

17 A. Yes.

18 Q. Now, when you say "daily operations of
19 their stores," can you be more specific as to what
20 you were expected to do?

21 A. I was to make sure that the stores were
22 open and closing, they were staffed, and that the
23 manager was performing their duties.

24 Q. To whom did the store managers report?

1 A. To Patrick and myself.

2 Q. And to whom did you report?

3 A. To Patrick.

4 Q. In addition to ensuring the stores were
5 opening and closing, staffed, and that the manager
6 was performing the duties, did you have any other
7 responsibilities as the marketing counselor?

8 A. To check off, do store audits, just check
9 off their bank slips, along with Patrick doing the
10 same.

11 Q. Did you have any responsibility for
12 inventory?

13 A. I was to be present at the inventories.

14 Q. Did you have any responsibility for ordering
15 product for stores?

16 A. Ordering their daily functions the managers
17 would do, or --

18 Q. The items that they would stock on the
19 shelves to sell.

20 A. If they needed help, the manager, then I
21 would go in and help them stock or order.

22 Q. If a manager didn't seek your help, that was
23 something that you would not normally do?

24 A. No.

1 Q. What responsibilities did you have for
2 supervising store managers?

3 A. Meaning what was my responsibilities?

4 Q. Yes.

5 A. To make sure, again, that they were doing
6 their job.

7 Q. Did you complete written evaluations of
8 store managers?

9 A. On occasion.

10 Q. What would you do if you found a store
11 manager who was not doing their job?

12 A. Then we would issue a performance notice.

13 Q. Would you personally issue the performance
14 notice?

15 A. Patrick or myself would.

16 Q. Did you have any other role in the
17 discipline of store managers?

18 A. Other than?

19 Q. Issuing a performance notice.

20 A. There was termination notices to go along
21 with it. I would, you know, step in, terminate an
22 employee if I see --

23 Q. Did you ever terminate an employee?

24 A. Yes.

1 Q. Did you ever issue performance notices?

2 A. Yes.

3 Q. As the marketing counselor, were you
4 responsible for knowing and understanding the
5 policies of the company?

6 A. Policy, we had a policy manual, every store
7 had.

8 Q. Did you read the manual?

9 A. Yes, I did.

10 Q. And were you familiar with its contents?

11 A. Yes.

12 Q. Was it your responsibility to make sure that
13 store managers were following policies as set forth
14 in that manual?

15 A. Yes.

16 Q. And if a store manager wasn't following one
17 of those policies, what would you do?

18 A. We would make sure that they were following
19 the policies as they were written.

20 Q. Would you discipline a manager for failing
21 to follow policies?

22 A. I believe we would.

23 Q. And did you, in fact, ever discipline a
24 manager for failing to follow the policies of the

1 manual?

2 A. I don't recall.

3 Q. Now, a moment ago I think you said, "I
4 believe we would." When you say "we," who is the
5 "we" that you are referring to?

6 A. Both Patrick and myself.

7 Q. If you observed a manager failing to follow
8 a policy, did you need to speak to Patrick before
9 issuing discipline, or were you authorized to issue
10 discipline on your own?

11 A. It'd go through Patrick and then back down
12 to me on what to do.

13 Q. Was that the case with all disciplines?

14 A. I don't know all. I just know the majority,
15 yes.

16 Q. How much time did Mr. McKeown spend in the
17 stores?

18 A. I don't know the exact amount of time he
19 spent in them, but he was in them quite frequently.

20 Q. How much time did you spend in the stores?

21 A. A lot of time.

22 Q. Were you in the stores every day?

23 A. Not every store.

24 Q. Did you have a set schedule for visiting

1 stores?

2 A. Schedule for? I would go in a couple of
3 stores a day to go to.

4 Q. How would you determine what couple of
5 stores you would go to on a particular day?

6 A. If there was a problem with help or stocking
7 and something wasn't full.

8 Q. Did Mr. McKeown tell you what stores to go
9 to?

10 A. He would rec- -- he would suggest, or if he
11 happened to be in a store and it needed a little
12 work, either he would do the work, or I would do --
13 call me. And I'd go and do it.

14 Q. If you decided that you wanted to go to a
15 particular store on a particular day, were you free
16 to do so?

17 A. If the store was having a problem, yeah.

18 Q. Did you ever go to stores that weren't
19 having problems?

20 A. Yes.

21 Q. How would you learn that stores were having
22 problems?

23 A. Communication between the office and
24 myself --

1 A. Yes. Sorry.

2 Q. What do you recognize it to be?

3 A. Without the whole thing here, it looks like
4 part of the policy manual.

5 Q. And on the second page, does it say, "200
6 Series Store Funds"?

7 A. Yes.

8 Q. Now, looking through the pages after that,
9 they are numbered 32 through 37, although I guess
10 37 is blank, are you familiar with these policies?

11 A. I recall some of these policies.

12 Q. What do you recall them from?

13 A. I believe it's in the policy manual.

14 Q. As the marketing counselor, were you
15 responsible for ensuring compliance with these
16 policies?

17 A. Again? Say it again.

18 Q. As the marketing counselor, were you
19 responsible for ensuring compliance with these
20 policies, these policies were followed?

21 A. The managers were responsible for making
22 sure these policies were followed.

23 Q. And as supervising the managers, were --

24 A. To make sure --

1 Q. -- you responsible --

2 A. -- that the managers, right.

3 MR. SCOTT: Wait for the question.

4 THE WITNESS: All right.

5 BY MR. COLOMB:

6 Q. In supervising the managers, were you
7 responsible for making sure that they were enforcing
8 these policies?

9 A. Right.

10 MR. COLOMB: I will just say this on the
11 record as well. I have a few other excerpted
12 sections. I am not going to ask questions, just
13 want to identify them for the record.

14 (Defendant's Exhibit No. 4 was marked for
15 identification.)

16 BY MR. COLOMB:

17 Q. Mr. Whalon, I have placed another set of
18 policies in front of you. The second page
19 identifies it as "202 Series Store Assets."

20 A. Uh-huh. (Indicates affirmatively).

21 Q. And it is a number of individual policies on
22 numbered pages 45 to 53. Do you recognize these
23 policies?

24 (Discussion off the record.)

1 MR. COLOMB: Do you want a moment?

2 MR. SCOTT: Was there a question?

3 BY MR. COLOMB:

4 Q. I just asked if you recognized the
5 policies?

6 A. It looks a little odd here with some of the
7 spellings and things in here.

8 Q. Can you --

9 A. It looked like something that --

10 Q. -- identify what is the -- what is
11 concerning?

12 A. They would have on their manual the
13 company. Pretty much that's all in here is
14 Christy's --

15 THE REPORTER: I'm sorry?

16 THE WITNESS: Christy's equals "S."

17 BY MR. COLOMB:

18 Q. Right, well, I am assuming that is supposed
19 to be an apostrophe.

20 Well, I certainly will agree that the
21 document throughout --

22 A. Okay.

23 Q. -- seems to have --

24 A. It seems --

1 Q. -- an equal sign in place of an apostrophe.

2 A. A few little --

3 Q. Other than that, --

4 A. -- discrepancies in there.

5 THE REPORTER: Sir.

6 BY MR. COLOMB:

7 Q. -- are there other discrepancies?

8 (Discussion off the record.)

9 MR. SCOTT: Could we go off the record?

10 MR. COLOMB: Yes, let me just --

11 MR. SCOTT: Well, wait. Is there a
12 question --

13 MR. COLOMB: Yes.

14 MR. SCOTT: -- pending.

15 MR. COLOMB: I mean, is their a question
16 pending, John?

17 THE REPORTER: Yes.

18 (Requested portion was read by the court
19 reporter.)

20 MR. SCOTT: Well, that was the equal sign
21 for Christy's.

22 MR. COLOMB: In fact, let's just -- I will
23 withdraw the question for the moment. We will go
24 off the record.

1 (Brief recess.)

2 (Defendant's Exhibit No. 5 was marked for
3 identification.)

4 MR. COLOMB: We will go back on. Just for
5 point of clarification, while we were off the
6 record, it appears that the excerpts from the
7 policy manual that were introduced as Exhibits 3
8 and 4 are, in fact, from an electronic version of
9 the policy manual, which, as far as I know,
10 represents what is in the printed policy manual.

11 However, the witness properly pointed out
12 that it was not a document that he was familiar
13 with working at the company, so I do not intend to
14 rely on Exhibits 3 and 4. Instead, we have
15 obtained the policy, the printed policy manual, in
16 fact, that the plaintiff has produced in this case,
17 and I am going to ask him to take a look at that in
18 a moment and identify that as an accurate copy of
19 the policy manual that he utilized working for the
20 company.

21 BY MR. COLOMB:

22 Q. So if you could take a moment to look at
23 what has been marked now as Exhibit 5?

24 Mr. Whalon, have you had a chance to look at

1 what has been marked as Exhibit 5?

2 A. Are you using the whole manual now, or are
3 you going to --

4 Q. Well, forgetting --

5 A. Okay.

6 Q. -- the other item, this is the document that
7 you produced through your attorney, and I am just
8 asking you if you recognize this document?

9 A. Yes.

10 Q. What do you recognize it to be?

11 A. Looks like their policy manual.

12 Q. And when you were earlier this afternoon
13 making reference to the policy manual, was this the
14 document you were talking about?

15 A. Yes.

16 Q. Excellent. We can move off the policy
17 manual. I want to ask you about two specific tasks
18 that you identified through the marketing counselor.
19 One of them was bank slips. You indicated that was
20 a responsibility of the marketing counselor, was
21 bank slips?

22 A. Can you ask the question again?

23 Q. Sure. All I wanted to know, that I would
24 want to note for the record that you made reference

1 to the policy manual in answering the question. All
2 I wanted to know is what you meant when you
3 indicated that the responsibility of the marketing
4 counselor was bank slips. What does that mean?

5 A. If there was a bank slip missing or anything
6 like that, that they notify me.

7 Q. "They" being?

8 A. Store managers.

9 Q. And what policy are you looking at in the
10 handbook at this point?

11 A. 200-003.

12 Q. I don't have a problem if you need to make
13 reference to the manual for something, but I would
14 like to explore first what you remember. So if you
15 are unable to answer a question but think the manual
16 may help you, let me know that. But in answering
17 the questions, I would ask you to answer them first
18 from your memory before we start looking at that
19 manual, okay?

20 You also mentioned store audits.

21 A. Uh-huh. (Indicates affirmatively).

22 Q. What would the responsibility of the
23 marketing counselor be, or what was your
24 responsibility with respect to store audits?

1 A. To -- if I was to go in and do a cash audit
2 on the store, I would do a cash audit on the store.

3 Q. Okay.

4 A. Lottery tickets, cigarettes, phone cards.
5 It was just a report that I would hand over to
6 Patrick, and I would do those as often as I could.

7 Q. Was there any set requirement that you do a
8 store audit at any particular time?

9 A. No.

10 Q. How would you decide, make the decision that
11 you were going to do a store audit?

12 A. Again, if Patrick would call me and said
13 there was a little problem with the store or
14 something, I'd go in and do a cash audit. If I was
15 there, I'd do a cash audit. Just, you know, that I
16 was there.

17 Q. Would you ever do a cash audit without
18 Patrick telling you to do so?

19 A. If I needed to, if the store manager called
20 me and said they were having a problem in the
21 store, I would do a cash audit in the store for
22 them.

23 Q. And did that ever happen?

24 A. It happened quite a few times.

1 Q. And what is involved in doing a cash audit?

2 A. Again, it's tallying up sales, phone cards,
3 lottery tickets, cigarette sales.

4 Q. And what period of time are you looking at?

5 A. For?

6 Q. For a cash audit.

7 A. Usually up till where they're missing their
8 product or their cash or whatever they're missing.

9 Q. So do I understand that there is
10 flexibility, you could do a cash audit for one day,
11 you could do a cash audit for multiple days?

12 A. One day.

13 Q. One day?

14 A. Uh-huh. (Indicates affirmatively).

15 Q. And by "one day," meaning the period of
16 time in one 24-hour block when the given store was
17 open?

18 A. Right.

19 Q. At the time you were employed, did Christy's
20 of Cape Cod operate 24-hour stores?

21 A. They did.

22 Q. Were all of the stores 24 hours?

23 A. No.

24 Q. So it varied store to store?

1 A. (Witness indicating.)

2 THE REPORTER: Excuse me, sir. I'm sorry.
3 Could you answer for the record, please? You just
4 sort of gestured.

5 THE WITNESS: No, I already answered it.

6 MR. SCOTT: Could you read back the last
7 question?

8 (Requested portion was read back by the
9 court reporter.)

10 BY MR. COLOMB:

11 Q. Oh, I think the court reporter is
12 indicating --

13 THE WITNESS: Oh, sorry.

14 MR. COLOMB: I'm sorry. I didn't notice
15 that either.

16 BY MR. COLOMB:

17 Q. So it would vary from store to store whether
18 the hours for the particular store would be open; is
19 that right.

20 A. Right. Yes.

21 Q. Thank you.

22 THE WITNESS: Sorry.

23 THE REPORTER: Thank you.

24 BY MR. COLOMB:

1 Q. In your role as marketing counselor, were
2 there any other job responsibilities that we haven't
3 talked about?

4 A. In the marketing counselor's --

5 Q. Marketing counsel.

6 A. -- position that we haven't talked about?
7 There was, like I said, various jobs. I would
8 actually run a store for them, manage it, lack of
9 help. Again, I took care of their computer systems.
10 I did all their PLU programming for them.

11 Q. When you say you would come in and run a
12 store for them, what would cause that to happen?

13 A. If a manager didn't show up or we terminated
14 them, didn't have a filled position, and couldn't
15 get anybody else to come in and do it.

16 Q. How often did that happen, that you would
17 need to run a store?

18 A. I don't recall how many times, but it was
19 quite frequent.

20 Q. Now, you indicated responsibility for
21 computers.

22 A. Uh-huh. (Indicates affirmatively).

23 Q. Can you tell me what responsibility you had
24 for computers?

1 Q. How did you learn that you were responsible
2 for these computer tasks?

3 A. It was just kind of thrown on my lap.

4 Q. I believe you said Mr. Price, the
5 comptroller, --

6 A. Uh-huh. (Indicates affirmatively).

7 Q. -- handled it prior to you?

8 A. Right.

9 Q. Do you know if he had any education on
10 computer programming?

11 A. I can't answer for him.

12 Q. Don't know. Were you paid on a salary or an
13 hourly basis?

14 A. Salary.

15 Q. You identified a number of computer
16 functions and identified a number of marketing
17 counselor functions. Are there any other functions
18 that you performed for Christy's of Cape Cod?

19 A. I still continued to do their food service
20 for them, also.

21 Q. And how many stores had a food service
22 operation?

23 A. I believe it was three.

24 Q. And what would you do for those three

1 stores?

2 A. Any of the Taco Bell stores that they
3 originally had.

4 Q. And the individuals who staffed these Taco
5 Bell stores, do you know if they were employed by
6 Christy's?

7 A. The manager staff of Taco Bell, they were
8 employed by Christy's.

9 Q. So the manager would personally make the
10 tacos?

11 A. I was told they did.

12 Q. Were there any other folks that worked at
13 the --

14 A. They did have --

15 Q. -- Taco Bell portion?

16 A. Right, these are Taco Bell Express
17 locations, which Christy's staffs.

18 Q. So is this a counter within the --

19 A. Right.

20 Q. -- existing Christy's store? Is food
21 prepared at that counter, or is it just heated at
22 the counter?

23 A. It's everything's done right there.

24 Q. And again, if the managers and Christy's

1 staff members were physically standing behind this
2 counter preparing the food, what responsibility did
3 you have?

4 A. It was just to make sure that they were
5 serving the food properly, the right temperatures,
6 they had the product.

7 Q. And how did this differ, if it did, from
8 your overall responsibility to ensure that the
9 stores were operating properly?

10 A. I mean, I would have to make sure the thing
11 was open. It had to be open.

12 Q. How could it not be open?

13 A. The Taco Bell manager or the store manager
14 didn't open it, you know, somebody didn't show up
15 for work.

16 Q. So, again, it would be an absenteeism
17 issue?

18 A. Right.

19 Q. Which I assume you encountered in the stores
20 as well?

21 A. Right.

22 Q. And I assume, for example, in your
23 supervision of stores, you were responsible to make
24 sure the freezers were at the right temperatures,

1 refrigerators were at the right temperatures, is
2 that a correct assumption?

3 A. That would be the Taco Bell manager that
4 would make sure that whatever they were storing in
5 there would be at that temperatures.

6 Q. Any other responsibilities that we haven't
7 talked about?

8 A. Not that I can recall.

9 THE REPORTER: I'm sorry?

10 THE WITNESS: Not that I can recall.

11 BY MR. COLOMB:

12 Q. From 1998 through 2002, was your performance
13 ever reviewed while you were working for Christy's
14 of Cape Cod?

15 A. Not that I can recall.

16 Q. Did Mr. McKeown ever discuss your
17 performance with you?

18 A. Not that I can recall.

19 Q. Did you receive raises during this period of
20 time?

21 A. Yes.

22 Q. How often did you receive raises?

23 A. Yearly.

24 Q. Is it your position that you should not have

1 Q. Do you know if it was the day after your
2 meeting or two days after your meeting, do you
3 have --

4 A. I don't --

5 Q. -- any recollection?

6 A. -- recall the exact date.

7 Q. Did you receive this message before the
8 three-day suspension would have ended?

9 A. I believe I did.

10 Q. What happened next?

11 A. I see my doctor.

12 Q. What doctor is that?

13 A. Dr. Gilson.

14 Q. Why did you see Dr. Gilson?

15 A. Anxiety and chest pains.

16 Q. Do you know what day you saw Dr. Gilson?

17 A. I don't recall the exact day.

18 Q. Was it after you received the voice mail
19 message from Patrick?

20 A. Again, I don't recall the exact day.

21 Q. I am not asking for the day. I am asking
22 the sequence. Do you remember if it was after that
23 message?

24 A. Offhand, I don't recall.

1 records, to provide just a logical piece of the
2 narrative here.

3 BY MR. COLOMB:

4 Q. Did Dr. Gilson do anything else in addition
5 to monitoring your heart and prescribing
6 medication?

7 A. Told me to take it easy.

8 Q. Did the doctor say anything with respect to
9 working?

10 A. He gave me a doctor's note for work.

11 MR. COLOMB: Mark that.

12 THE REPORTER: Sure.

13 (Defendant's Exhibit No. 7 was marked for
14 identification.)

15 BY MR. COLOMB:

16 Q. I have placed a document in front of you
17 that has been marked as Exhibit No. 7 and ask you if
18 you recognize it?

19 A. Yes.

20 Q. What do you recognize it to be?

21 A. A doctor's note.

22 Q. Do you recognize it as the doctor's note
23 from Dr. Gilson that you were just discussing?

24 A. Yes.

1 Q. Looking at the document, does that help you
2 to remember when you saw Dr. Gilson?

3 A. It's got a date on it.

4 Q. What is that date?

5 A. February 27th.

6 Q. Do you have reason to believe that
7 accurately reflects when you saw the doctor?

8 A. It may. That's what is here on the paper.

9 Q. Do you have any reason to doubt that that
10 is an accurate statement of when you saw the
11 doctor?

12 A. No.

13 Q. Did Dr. Gilson do anything else for you
14 during this visit?

15 A. Not that I can recall.

16 Q. Based on this doctor's note, which indicates
17 you should not return -- "may not return to work
18 until March 13th," did you, in fact, do anything
19 with respect to working?

20 A. Did I?

21 Q. Yes.

22 A. I don't recall.

23 Q. Did you have any further contact with Pat
24 McKeown or anyone from Christy's?

1 A. I don't recall offhand.

2 Q. Do you know if you told Pat McKeown or
3 anyone from Christy's that you would be unable to
4 return to work until March 13th?

5 A. This letter was sent to them.

6 Q. How was the letter sent to them?

7 A. This letter was FAXed to them.

8 Q. Who FAXed it to them?

9 A. I FAXed it.

10 Q. When you say "them," did you FAX it to a
11 particular individual?

12 A. I believe I called Patrick at home, and he
13 told me to FAX it.

14 Q. Did you call Patrick on the same day you
15 received the note?

16 A. Again, I don't recall.

17 Q. Do you have any reason to believe you called
18 Patrick or FAXed the note any earlier than February
19 27th?

20 A. I don't recall.

21 Q. What did Patrick say to you during this
22 phone conversation, if anything?

23 A. It was brief, and it was fine and, "Send the
24 letter, send it out."

1 A. Every two to three weeks.

2 Q. Every two to three weeks. And how long had
3 that been happening?

4 A. Since 2000.

5 Q. Since 2000 -- well, from 2000 up until
6 February of 2002, had you ever missed work due to
7 any of these medical treatments or any medical
8 condition?

9 A. I don't recall.

10 Q. Prior to February of 2002, had you ever told
11 anyone at Christy's that you were receiving medical
12 treatment for depression or anxiety?

13 A. I don't recall.

14 Q. Well, I would like you to think for a moment
15 on that question, if you would?

16 Do you remember if you ever told Patrick
17 McKeown that you were receiving such treatment?

18 A. I -- again, I don't recall.

19 Q. Prior to February of 2002, had you ever
20 sought any leave time from Christy's?

21 A. From what dates?

22 Q. From 1998, when you started with Christy's
23 of Cape Cod, through February of 2002, had you ever
24 sought leave?

1 A. I don't recall.

2 Q. Do you recall if you ever actually took a
3 leave?

4 A. I didn't take a leave.

5 Q. Do you have any reason to believe you asked
6 for it, and it was denied?

7 A. No.

8 Q. Did you ask for any leaves from Christy's of
9 Cape Cod after February of 2002?

10 A. I believe I did.

11 Q. Do you know when?

12 A. I don't recall the date.

13 Q. Do you know why you asked for a leave?

14 A. Medical.

15 Q. What was your understanding of your
16 employment by the company as of the March 27th
17 meeting?

18 A. I had no correspondence with.

19 THE REPORTER: I'm sorry?

20 THE WITNESS: I had no correspondence with
21 anybody from Christy's on it.

22 BY MR. COLOMB:

23 Q. Did you, in fact, receive Exhibit No. 10 at
24 the meeting on March 27th?

1 that question?

2 A. I don't know if I made a mistake, or -- I
3 just put "uncertain."

4 Q. Prior to February 22nd when you met with Pat
5 McKeown for the first time, had Pat McKeown ever
6 told you that your performance at Christy's was
7 unsatisfactory?

8 A. What dates again?

9 Q. Any time before February 22nd, your first
10 meeting with Pat McKeown, had he ever told you that
11 your performance was unsatisfactory --

12 A. No.

13 Q. -- at Christy's? Had anyone else at
14 Christy's prior to February 22nd ever told you that
15 your performance was unsatisfactory?

16 A. No.

17 Q. Prior to February 27th when you provided a
18 note from Dr. Gilson, had you ever told Patrick
19 McKeown that you were being treated for any
20 condition relating to anxiety, chest pain, stress,
21 bipolar disorder, or any of the other illnesses that
22 you have mentioned today?

23 A. I don't recall.

24 Q. Prior to February 27, 2002, had you ever

1 told anyone at Christy's Market other than Pat
2 McKeown that you were being treated for any of those
3 conditions?

4 A. I don't recall.

5 Q. Is there a reason why you don't recall?

6 A. I don't recall that if I had spoke with
7 anybody.

8 Q. Do you discuss this topic with individuals
9 other than family members and physicians?

10 A. I don't recall.

11 MR. COLOMB: That is probably a good
12 stopping point. I want to look over the medical
13 stuff --

14 MR. SCOTT: All right.

15 MR. COLOMB: -- and wrap it up after we do
16 that.

17 For the record, we are going to suspend the
18 deposition at this point by agreement of the
19 parties. We do have some additional medical
20 documentation that was provided fairly close in
21 time to the deposition, which the parties have
22 agreed the defense will have an opportunity to
23 review and come back with some additional questions
24 on that, rather than heading into that water